(1) me Court, U.S.

991662 APR 17 2000

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

CAPT. RICHARD CORWIN,

Petitioner,

v.

AIR LINE PILOTS ASSOCIATION and ROBERT O. HARRIS,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

NICHOLAS E. KARATINOS, ESQ.
Counsel of Record
SEELEY & KARATINOS, P.A.
3924 Central Avenue
St. Petersburg, FL 33711
(727) 328-1650

Counsel for Petitioner, Capt. Richard Corwin

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

45pp

QUESTIONS PRESENTED

1. Whether as a prerequisite of federal appellate jurisdiction a party must file an initial, timely notice of appeal followed by a succession of additional timely notices of appeal in order to establish jurisdiction for the appeal?

2. Whether the Supreme Court should adopt as national policy the position held by virtually all Federal Circuit Courts of Appeal which accept for purposes of jurisdiction a party's timely initial notice of appeal by permitting either a relation forward or a limited remand in order to effectuate that party's intent to appeal?

3. Whether a System Board of Adjustment Award properly issued under the Railway Labor Act can be defeated by the application of principles of jurisdiction rejected by most Federal Circuit Courts of Appeal?

RULE 29.1 STATEMENT

Pursuant to Rule 29.1 of the Rules of this Court, petitioner Capt. Richard Corwin, an individual, was formerly a Captain with Eastern Airlines [EAL] with over 15,000 hours of flight experience. Since ending his career with EAL, he has been employed as an aviation consultant, as a pilot instructor, and as a contract pilot. Defendant Air Line Pilots Association [ALPA] is a labor union which represents pilots employed by the nation's major airlines. Defendant Robert O. Harris is a licensed attorney with offices in Washington, D.C. who has served as a consultant to ALPA.

TABLE OF CONTENTS

Page

Questions Presented i

Rule 29.1 Statement ii

Table of Authorities iv

Opinions below 1

Jurisdiction 1

Statutory Provision Involved 1

Statement 1

Summary of Argument 7

Reasons for Granting the Petition 8

Conclusion 18

Appendix ..... App. 1

TABLE OF AUTHORITIES

Page

CASES

Agruirre v. S.S. Sohio Intrepid, 801 F.2d 1185 (9th Cir. 1986) 11

A.O. Smith Corp. v. Sims Consolidated, Ltd., 647 F.2d 118 (10th Cir. 1981)..... 9

Berman v. United States, 302 U.S. 211 (1937) 11

Beckett v. Air Line Pilots Assn., 995 F.2d 280 (D.C.Cir. 1993) 17

Boyko v. Anderson, 185 F.3d 672 (7th Cir. 1999).. 10, 11, 15

Clausen v. Sea-3, Inc., 21 F.3d 1181 (1st Cir. 1994) ..8, 11

Construction Aggregates Ltd. v. Forest Commodities Corp., 147 F.3d 1334 (11th Cir. 1998) 7

Contemporary Mission, Inc. v. United States Postal Serv., 648 F.2d 97 (2nd Cir. 1981) 14

Crowley Maritime Corp. v. Panama Canal Comm'n, 849 F.2d 951 (5th Cir. 1988).....9, 11

Diamond v. Terminal Ry., 421 F.2d 228 (5th Cir. 1970)..... 16

Feather v. United Mine Workers of America, 711 F.2d 530 (3rd Cir. 1983)..... 9

First Nat'l Bank of Salem v. Hirsch, 535 F.2d 343 (6th Cir. 1976) 14

Freeman v. Hittle, 747 F.2d 1299 (9th Cir. 1985) 9

Griggs v. Provident Consumer Discount Co., 459 U.S. 56 (1982).....9, 10

TABLE OF AUTHORITIES – Continued

Page

Good v. Ohio Edison Company, 104 F.3d 93 (6th Cir. 1997) 9

Harrison v. Edison Bros. Apparel Stores, Inc., 924 F.2d 530 (4th Cir. 1991) 9, 11

Haskell v. Washington Township, 891 F.2d 132 (6th Cir. 1989) 12

In re Chateaugay Corp., 922 F.2d 86 (2nd Cir. 1990) ..8, 11

Intel Corp. v. Terabyte Int'l, Inc., 6 F.3d 614 (9th Cir. 1993) 12

International Assn. of Machinists v. Central Airlines, 772 U.S. 682 (1963), *rehearing denied*, 373 U.S. 947 (1963) 16

Jetco Elec. Indus., Inc. v. Gardiner, 473 F.2d 1228 (5th Cir. 1973) 15

Kelly v. Lee's Old Fashioned Hamburgers, Inc., 896 F.2d 923 (5th Cir. 1990) 9

Kelley v. Michaels, 59 F.3d 1055 (10th Cir. 1995) 9

Kusay v. United States, 62 F.3d 192 (7th Cir. 1995) ...10, 15

Lac Courte Oreilles Band v. Wisconsin, 760 F.2d 177 (7th Cir. 1985) 11

Lairsey v. Advance Abrasives Co., 542 F.2d 928 (5th Cir. 1976) 14

Leonhard v. United States, 633 F.2d 599 (2nd Cir. 1980) 8

Lewis v. B.F. Goodrich Co., 850 F.2d 641 (10th Cir. 1988) 11

Local P-171, Meatcutters Union v. Thompson Farms Co., 642 F.2d 1065 (7th Cir. 1981) 9

TABLE OF AUTHORITIES – Continued

Page

Martinez v. Arrow Truck Sales, 865 F.2d 160 (8th Cir. 1988) 9, 11

Mesa v. U.S., 61 F.3d 30 (11th Cir. 1995) 7

Metallurgical Indus., Inc. v. Fourtck, Inc., 771 F.2d 915 (5th Cir. 1985) 11

Puerto Rico v. SS Zoe Colocotroni, 601 F.2d 39 (1st Cir. 1979), *cert. denied*, 450 U.S. 912 (1981) 14

Salisbury v. United States, 356 F.2d 822 (D.C.Cir. 1966) 14

Smith v. Barry, 502 U.S. 244 (1992) 12

Smith v. Lujan, 588 F.2d 1304 (9th Cir. 1979) 14

State Treasurer of the State of Michigan v. Barry, 168 F.3d 8 (11th Cir. 1999) 7

Tidler v. Eli Lilly & Co., 824 F.2d. 84 (D.C.Cir. 1987) ..9, 11

Tilden v. Financial Corp. v. Palo Tire Service, Inc., 596 F.2d 604 (3rd Cir. 1979) 8

United States v. Cronic, 466 U.S. 648 (1984) 10

United States v. Hardage, 982 F.2d 1491 (10th Cir. 1993) 11

United States v. Ienco, 126 F.3d 1016 (7th Cir. 1997) 10

Usden v. Acker, 947 F.2d 1563 (11th Cir. 1991), *cert. denied*, 508 U.S. 959 (1993) 11, 12

Wilson v. Navistar International Transportation Corp., 999 U.S. App. LEXIS 26847 (11th Cir. Oct. 26, 1999) 13

Zig Zag Spring Co. v. Comfort Spring Corp., 200 F.2d 901 (3rd Cir. 1953) 14

TABLE OF AUTHORITIES – Continued

Page

STATUTES AND REGULATION

28 U.S.C. § 1254(1) 1

45 U.S.C. § 153 First (p) 1, 2

Fed.R.Civ.P. 50(b) 13

Fed.R.Civ.P. 52(b) 13

Fed.R.Civ.P. 54(b) ..... *passim*

Fed.R.Civ.P. 59..... 13

Fed.R.Civ.P. 60..... 14

Fed.R.Civ.P. 60(b) 10, 15

Fed.R.App.P. 4.....9, 11

Fed.R.App.P. 4(a) 10, 14

Fed.R.App.P. 4(a)(2).....11, 12, 13, 14, 16

Fed.R.App.P. 4(a)(4).....13, 14

Fed.R.App.P. 4(a)(4)(A)..... 14

Fed.R.App.P 4(a)(4)(B)(i) 14

Fed.R.App.P. 4(a)(4)(B)(ii) 14

MISCELLANEOUS

Wright & Miller, *Federal Practice and Procedure* § 2873 (1973)..... 14

Wright & Miller, *Federal Practice and Procedure* § 2660 (West Supp. 1986)..... 9

PETITION FOR A WRIT OF CERTIORARI

Capt. Richard Corwin petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The Order of the court of appeals denying rehearing of this case and the earlier Orders of the court of appeals and of the United States District Court are set forth in the Appendix. None of the orders in this case are published.

JURISDICTION

The judgment of the court of appeals denying rehearing was entered on February 9, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

The underlying case arises under the Railway Labor Act, 45 U.S.C. § 153 First (p).

STATEMENT

This case originated with a System Board of Adjustment (SBA) award brought by the Air Line Pilots Association (ALPA) under the Railway Labor Act. The SBA

award issued on January 17, 1991, reinstating Capt. Corwin to his position as an airline captain with Eastern Airlines (EAL), and making him whole by awarding backpay and benefits. The SBA award reversed EAL's discharge of Capt. Corwin of June 26, 1987. The SBA award placed Capt. Corwin in the same status as other employed EAL pilots who had not been discharged unlawfully. EAL complied fully with the Corwin SBA award. EAL reinstated Capt. Corwin to his previous position of pilot and removed the discharge from its records. EAL's amended records show Capt. Corwin to be employed continuously by EAL from his hire in 1966 until the EAL shutdown on January 18, 1991. Suit was brought by Capt. Corwin in this case to enforce the SBA award provisions upon ALPA.

After the EAL shutdown, ALPA negotiated with EAL a number of pilot group grievances and lawsuits for additional monies leading to a three part settlement agreement adopted by the bankruptcy court. Counts I and II of the complaint in this case seek enforcement of the Corwin SBA award which entitled Capt. Corwin to share equally in the settlement agreements with other EAL pilots. This action also seeks for Capt. Corwin the additional post-bankruptcy pay and benefits that ALPA negotiated for all pilots, including Capt. Corwin. The Corwin SBA award was not challenged by ALPA under 45 U.S.C. § 153 First (p) of the Railway Labor Act which provides that an SBA award may be set aside for only three reasons: (1) failure to comply with the requirements of the RLA; (2) failure to conform or confine itself to matters within the arbitrator's jurisdiction, or (3) fraud or corruption by the arbitrator. In these circumstances, the

trial court's failure in this case to enforce the provisions of the SBA award upon ALPA is inexplicable.

Counts III, IV and V of the Corwin Complaint allege that ALPA, and its agent, Robert O. Harris, violated the common law of trusts by failing and refusing to accept as precedent the legal and factual holdings of the SBA award. Counts VI, VII, VIII and IX of the Complaint allege violations of ERISA for failure to comply with the Corwin SBA award. These provisions are pleaded in the alternative as it remains unclear if the settlement agreements in this case create common law trusts or ERISA trusts. By the terms of the settlement agreements, ALPA, and through ALPA, its agent, Robert O. Harris, are responsible for adjudicating and disbursing funds from the EAL bankruptcy estate which by law are held in trust for beneficiaries such as Capt. Corwin. The bankruptcy judge approved these settlement agreements using trust principles in delegating to ALPA the responsibility for concluding the work of the bankruptcy court.

ALPA placed mischievous language in the three settlement agreements stating that the agreements " . . . shall not create any trust relationships and shall not impose any trusteeship obligations upon ALPA or Eastern." Yet, when the funds of the $29.5 million settlement agreement were received by ALPA from the bankruptcy court in 1992, these funds were immediately placed in a Grantor Trust by ALPA. It cannot be otherwise as ALPA is standing in the shoes of the bankruptcy judge and making the hundreds of individual decisions in disbursing the money from the bankruptcy estate.

Capt. Corwin was a staunch supporter of ALPA throughout the strike against EAL, and was compensated for services performed for ALPA following his discharge by EAL. The relationship between Capt. Corwin and ALPA changed following the EAL shutdown. Capt. Corwin became a supporter of Pro Justicia, a group of pilot dissidents within ALPA who objected to ALPA's position in the EAL bankruptcy case. A factor in ALPA's refusal to honor the Corwin SBA award may well be Capt. Corwin's dissident activities.

This case has been complicated by the filing of a counterclaim by ALPA seeking to recover certain payments made by ALPA to Capt. Corwin during his service to ALPA following his discharge on June 26, 1987, and up until the EAL shutdown in January, 1991. ALPA assigned Capt. Corwin a number of positions after his termination including assignments during the strike and picket duties. EAL complied with the Corwin SBA award by agreeing to pay to Corwin backpay and benefits from the date of the termination, June 26, 1987, to the EAL shutdown, January 18, 1991. However, due to bankruptcy law constraints for individuals not performing an actual service for the estate, EAL compensated Capt. Corwin up to the date of EAL's bankruptcy filing, March 9, 1989. These pre-bankruptcy funds were compromised by the bankruptcy judge in the amount of $18,673.30, which was paid to Capt. Corwin, who had filed the proof of claim. ALPA's counterclaim seeks this amount. These pre-bankruptcy funds are different from and must be distinguished from the money placed in the three settlement agreements. The monies placed in the three settlement agreements were post-bankruptcy funds for additional

pay and benefits litigated and settled by ALPA for all employed pilots, including Capt. Corwin. Authorization for the distribution of these funds was given to ALPA by the bankruptcy judge via the three settlement agreements.

ALPA has not expressed interest in pursuing the counterclaim except as an adjunct to Capt. Corwin's case in chief. ALPA so advised the district judge after his entry of summary judgment in this case. Thus, Capt. Corwin filed an immediate Notice of Appeal on January 9, 1998, from an order of the District Court dated December 23, 1997, dismissing Plaintiff's case on summary judgment, but retaining jurisdiction over Defendants' counterclaim. The 11th Circuit on February 25, 1998, requested that the parties address whether the December 23, 1997, decision "disposed of Defendant[s] counterclaim, and thus, is final and appealable." The text of this Order is in Appendix G. Thereafter, Plaintiff seeking to save time took a shortcut and requested the trial judge issue a Rule 54(b) certification. Despite a lack of jurisdiction (the case was on appeal), the trial judge issued the certification on March 5, 1998. The text of the Rule 54(b) Order is in Appendix H. Capt. Corwin by letter of March 13, 1998, sent the 54(b) Order to the 11th Circuit. The letter was not in the form of a second Notice of Appeal.[1] Nothing further was received from the clerk.

---

[1] Plaintiff's letter is addressed to Mr. Kahn, the clerk of the 11th Circuit, and states:

> Pursuant to Plaintiff's Motion Pursuant to Rule 54(b) F.R.C.P. Requesting that the Court Issue an Express

On August 5, 1998, the 11th Circuit dismissed the appeal of January 9, 1998. The text of the August 5, 1998, Order is in Appendix F. The 11th Circuit's Order is silent as to the March 13, 1998, Rule 54(b) Order of the trial court leading Plaintiff to believe that the Rule 54(b) Order was ineffective as well. Thus, Capt. Corwin read the Court's dismissal as requiring him to return to the trial court and resume litigation of the counterclaim.

Before the trial court, Capt. Corwin refused repeated requests from ALPA to join ALPA in a voluntary dismissal of the counterclaim. He further objected to ALPA's motion filed on September 17, 1988, with the trial court to withdraw the counterclaim without prejudice to refile as he understood that the counterclaim must be litigated or finally disposed of as a condition precedent to an appeal on the merits of the summary judgment dismissal.

On April 2, 1999, the trial court overruled Capt. Corwin's objections, and approved ALPA's voluntary withdrawal of the counterclaim without prejudice to

---

> Direction for Entry of Final Judgment, the Hon. Richard A. Lazzara, the trial judge in this action, has granted the motion by Order issued on March 5, 1998. Four copies of Judge Lazzara's Order are enclosed with this letter.
>
> Kindly bring Judge Lazzara's Order to the attention of the Court. Given that an appropriate final Order has been issued pursuant to Rule 54(b) by the trial court, Plaintiff submits that the Eleventh Circuit Court of Appeals may take jurisdiction over this matter.
>
> Do not hesitate to contact me if anything further is required from me.

refile. On April 12, 1999, Capt. Corwin filed a second Notice of Appeal and a brief on June 30, 1999, presenting the merits of his case. On May 18, 1999, the 11th Circuit ordered the parties to address the following jurisdictional issue:

> Whether the district court's April 2, 1999, order is a final decision, and therefore, appealable? *See State Treasurer of the State of Michigan v. Barry*, 168 F.3d 8 (11th Cir. 1999); *Construction Aggregates, Ltd. v. Forest Commodities Corp.*, 147 F.3d 1334 (11th Cir. 1998); *Mesa v. U.S.*, 61 F.3d 30 (11th Cir. 1995).

On October 21, 1999, the 11th Circuit refused to hear the merits of the summary judgment dismissal on the grounds that Capt. Corwin should have appealed within 30 days of the Rule 54(b) certification of March 6, 1998. Capt. Corwin's motion for reconsideration requesting that this Court permit a relation forward or in the alternative, a remand to the trial court of the merits of this case, was denied on February 9, 2000. The Order of February 9, 2000, is set forth in Appendix A.

SUMMARY OF ARGUMENT

Did Capt. Corwin's timely-filed initial notice of appeal effectively state his intent to really, really want to appeal? Is the insistence by the 11th Circuit that a party file an initial, timely notice of appeal, followed by additional, multiple timely notices of appeal based upon form rather than substance? The right of a party to file an effective initial notice of appeal should not be trumped by the rules of excessive complexity applied by the 11th

Circuit. The Supreme Court should adopt as national policy the majority view which permits a relation forward and/or a limited remand from a party's timely initial notice of appeal which resolves the procedural issues of Capt. Corwin's case and other similar cases. The 11th Circuit stands virtually alone in clinging to a minority position which is unnecessarily complex resulting in the ensnaring of unwary litigants, and which honors form over substance. Moreover, the minority position applies procedures which violate established precedents that prohibit a trial court from issuing an effective Rule 54(b) Order during the period in which the case is before the Court of Appeals. The Supreme Court should adopt the majority position as national policy. This initial appeal which involves fundamental issues arising under the Railway Labor Act should be permitted to proceed.

REASONS FOR GRANTING THE PETITION

According to the 11th Circuit's Order of October 21, 1999, and the February 9, 2000, Order denying reconsideration of the initial appeal, Plaintiff should have filed a new notice of appeal within 30 days after the District Court entered the Rule 54(b) certification on March 6, 1998.[2] The 11th Circuit concluded that the appeal filed by

[2] Excepting the 11th Circuit, perhaps the 10th Circuit, the federal circuit courts of appeal do not require a second notice of appeal after a Rule 54(b) certification. *Clausen v. SEA-3, Inc.*, 21 F.3d 1181 (1st Cir. 1994); *Leonhard v. United States*, 633 F.2d 599 (2nd Cir. 1980); *In re Chateaugay Corp.*, 922 F.2d 86 (2nd Cir. 1990); *Tilden Financial Corp. v. Palo Tire Service, Inc.*, 596 F.2d 604

plaintiff at the close of the case in April of 1999 was "more than a year late." Plaintiff submits that the 11th Circuit is in error. The 11th Circuit's practice of requiring parties to file a new notice of appeal when a Rule 54(b) certification is entered while a case is already technically on appeal violates Fed. R. App. P. 4 and well-established principles of jurisdiction.

The District Court had no jurisdiction over the case when it entered the March 6, 1998, Rule 54(b) certification. Consequently, the Rule 54(b) certification is without legal effect and does not begin the tolling period for purposes of Fed. R. App. P. 4. It is textbook law that the District Court is divested of jurisdiction over an issue on appeal once the notice of appeal is filed. *See, Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982);

(3rd Cir. 1979); *Feather v. United Mine Workers of America*, 711 F.2d 530 (3d Cir. 1983); *Harrison v. Edison Bros. Apparel*, 924 F.2d 530 (4th Cir. 1991) (discussing the split in the circuits); *Crowley v. Panama Canal Comm'n*, 849 F.2d 951 (5th Cir. 1988); *Kelly v. Lee's Old Fashioned Hamburgers, Inc.*, 896 F.2d 923 (5th Cir. 1990); *Good v. Ohio Edison Company*, 104 F.3d 93 (6th Cir. 1997) (expressly adopting the majority view); *Local P-171, Meatcutters Union v. Thompson Farms Co.*, 642 F.2d 1065, 1075 (7th Cir. 1981); *Martinez v. Arrow Truck Sales, Inc.*, 865 F.2d 160 (8th Cir. 1988) (expressly adopting the majority view); *Freeman v. Hittle*, 747 F.2d 1299 (9th Cir. 1985) (expressly adopting the majority view); *Kelley v. Michaels*, 59 F.3d 1055 (10th Cir. 1995) (not requiring second notice after a Rule 54 certification), *but see A.O. Smith Corp. v. Sims Consolidated Ltd.*, 647 F.2d 118 (10th Cir. 1981); *Tidler v. Eli Lilly & Co.*, 824 F.2d 84 (D.C.Cir. 1987) (expressly adopting the majority view). "Most circuits have ruled that Rule 54(b) certification is sufficient to validate a premature notice of appeal." 10 C Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* § 2660 (West Supp. 1986).

Boyko v. Anderson, 185 F.3d 672, 674 (7th Cir. 1999). The Supreme Court states in *Griggs*:

> [A] federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously. The filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.

Id. at 459 U.S. 56.

With some exceptions not relevant here, *see*, Fed. R. App. P. 4(a) (discussed below); *Kusay v. United States*, 62 F.3d 192, 194 (7th Cir. 1995), the "district court and the court of appeals do not share jurisdiction over the same case." *Boyko*, 185 F.3d at 674, *citing Griggs*, 103 S. Ct. at 400; *United States v. Ienco*, 126 F.3d 1016, 1018 (7th Cir. 1997).

> Jurisdiction is either all in one court or all in the other. This rule is necessary to prevent one court's stepping on the toes of the other, which would waste judicial time as well as forcing the parties to proceed in two courts in the same case at the same time.

Boyko, 185 F.3d at 674 (Posner, J., finding a district court's grant of a Rule 60(b) motion while the case was on appeal to be void); *see also, Kusay*, 62 F.3d at 193 (concluding that district court findings while case was on appeal were a "nullity").[3]

---

[3] A District Court may deny, but not grant, a post-judgment motion while an appeal is pending. *United States v. Cronic*, 466 U.S. 648, 667 n.42 (1984). Thus, the District Court in this case did

Fed.R.App.P. 4 addresses explicitly the situations in which concurrent jurisdiction may be exercised by the appellate and district courts. Subsection (a)(2), allows relation forward in cases where the notice of appeal is filed after a district court's decision but before entry of judgment. Subsection (a)(4) sets forth the instances in which action in the district court will potentially have some impact on the jurisdiction of the court of appeals.

Virtually all Courts of Appeals have dealt with the problem of premature appeals in Fed.R.Civ.P. 54(b) situations either by embracing the type of relation forward allowed by Fed. R. App. P. 4(a)(2) or by allowing a limited remand to perfect appellate jurisdiction. *See Clausen v. Sea-3, Inc.*, 21 F.3d 1181, 1184 (1st Cir. 1994); *Boyko*, 185 F.3d at 674.[4] This policy protects the

---

not possess jurisdiction to grant a Rule 54(b) motion given the pending appeal. In this vein, *Berman v. United States*, 302 U.S. 211, 214 (1937), holds that a district judge lacks authority to resentence a defendant while an appeal is pending.

[4] Virtually all of the circuits, that have addressed jurisdictional quagmires similar to this one have held that a belated Fed. R. Civ. P. 54(b) certification ripens a premature notice of appeal as of the date of the certification. *See, United States v. Hardage*, 982 F.2d 1491, 1494-95 (10th Cir. 1993); *Harrison v. Edison Bros. Apparel Stores. Inc.*, 924 F.2d 530, 532 (4th Cir. 1991); *In re Chateaugay Corp.*, 922 F.2d 86, 91 (2nd Cir. 1990); *Martinez v. Arrow Truck Sales*, 865 F.2d 160, 161-62 (8th Cir. 1988); *Crowley Maritime Corp. v Panama Canal Comm'n*, 849 F.2d 951, 954 (5th Cir. 1988); *Metallurgical Indus., Inc. v. Fourtek, Inc.*, 771 F.2d 915, 916 (5th Cir. 1985); *Tidler v. Eli Lilly & Co.*, 824 F.2d 84, 85-86 (D.C.Cir. 1987); *Aguirre v. S.S. Sohio Intrepid*, 801 F.2d 1185, 1189 (9th Cir. 1986); *Lac Courte Oreilles Band v. Wisconsin*, 760 F.2d 177, 180-81 (7thCir. 1985); *Lewis v. B.F. Goodrich Co.*, 850 F.2d 641, 645 (10th Cir. 1988). *But see Useden v. Acker*, 947 F.2d 1563, 1570 (11th

Appellant's right to preserve the appeal. Relation forward is warranted here in that Plaintiff notified the 11th Circuit by letter on March 13, 1998, enclosing the District Court's Fed.R.Civ.P. 54(b) certification issued on March 6, 1998, just five days before. Although not in the form of a notice of appeal, Plaintiff's letter of March 13, 1998, read together with the initial Notice of Appeal, which the letter sought to amend, should permit a relation forward which would save this appeal. *See, Smith v. Barry*, 532 U.S. 244, 252 (1992) (In *Smith*, Plaintiff filed an informal brief rather than a notice of appeal causing the Court to write: "When papers are 'technically at variance with the letter of [Rule 3], a court may nonetheless find that the litigant has complied with the rule if the litigant's action is the functional equivalent of what the rule requires.' "), *Intel Corp. v. Terabyte Int'l, Inc.*, 6 F.3d 614, 617 (9th Cir. 1993). In the alternative, the 11th Circuit should have permitted a limited remand to preserve Capt. Corwin's appeal rights. Capt. Corwin's timely letter of March 13, 1998, set forth in full in footnote 1, *supra*, is the functional equivalent of a second notice of appeal and should have been accepted as such.

At the time Capt. Corwin filed his first notice of appeal, the 11th Circuit allowed neither relation forward under Fed.R.App.P. 4(a)(2), *see*, the Order of August 5, 1998, nor limited remands, to perfect appeals over cases of this sort. *See, Useden v. Acker*, 947 F.2d 1563, 1569 (11th Cir. 1991). On October 26, 1999, however, Judges Carnes,

---

Cir. 1991), *cert. denied*, 113 S.Ct. 2927 (1993); *Haskell v. Washington Township*, 891 F.2d 132, 133 (6th Cir. 1989).

Black and Godbold issued a per curium opinion recognizing that under Fed. R. App. P. 4(a)(2), "when a notice of appeal is filed between the time of decision or order and the time that the order is rendered appealable by the entry of judgment the otherwise premature notice of appeal is treated as if filed on the date of and after entry of judgment." *Wilson v. Navistar International Transportation Corp.*, 1999 U.S. App. LEXIS 26847 (11th, Cir., October 26, 1999) (asserting jurisdiction over case in which a Fed.R.Civ.P. 54(b) certification was entered after notice of appeal on the ground that Fed.R.App.P. 4(a)(2) allows relation forward and, in the alternative, the appellant had filed a new notice of appeal). Note, however, that Fed.R.App.P. 4(a)(2) does not require that the appellant file a new notice of appeal; it acts automatically to move the filing of the notice of appeal forward to the appropriate date. *Wilson* is congruent with the majority view, but does not cite it; however, it appears that the three judges in *Wilson* may be embracing the majority rule.

Fed.R.App.P. 4(a)(4) covers all other situations in which activity in the district court during the pendency of the appeal may affect the jurisdiction of the Court of Appeals. Under Fed. R. App. P. 4(a)(4) only a small handful of actions in the district court will affect the legitimacy and/or timing of the initial notice of appeal filed with the Court of Appeals. Specifically, Rule 4(a)(4) identifies motions involving Fed.R.Civ.P. 50(b), Fed.R.Civ.P. 52(b), attorneys fees under Fed.R.Civ.P. 54 (if district court extends appeal time under Rule 58), Fed.R.Civ P. 59,

and Fed.R.Civ.P. 60.[5] Note further that subsection (a)(4)(B)(i) provides explicitly that "the notice becomes effective to appeal a judgment or order [listed in 4(a)(4)(A)] when the order disposing of the last such remaining motion is entered." In the event a party plans to challenge an order listed in 4(a)(4)(A), subsection 4(a)4)(B)(ii) provides for the filing of a new or amended notice of appeal within 30 days" from the entry of the order disposing of the last such remaining motion." Significantly, Fed.R.App.P. 4(a)(4) does not mention judgments or certifications entered pursuant to Fed.R.Civ.P. 54(b).

The clear intent of Fed.R.App.P. 4(a)(2) and (a)(4) is to limit the instances in which the federal district and appellate courts exercise concurrent jurisdiction. The Rule seeks to avoid the very type of confusion that occurred in the instant case by defining the universe of situations in which it is permissible to file a second notice of appeal regarding an issue that is technically on appeal at the time. See Fed. R. App. P. 4(a)(4)(B)(ii). Thus, because the initial appeal in this case did not fall within either of the relevant provisions of Fed. R. App. P. 4(a) (as

---

[5] Under Rule 60, after a notice of appeal has been filed, absent an order from the appellate tribunal remanding the matter, the trial court does not retain jurisdiction to grant a motion to vacate judgement. *Puerto Rico v. SS Zoe Colocotroni*, 601 F.2d 39 (1st Cir. 1979), *cert. denied*, 450 U.S. 912 (1981); *Contemporary Mission, Inc. v. United States Postal Serv.*, 648 F.2d 97 (2nd Cir. 1981); *Zig Zag Spring Co. v. Comfort Spring Corp.*, 200 F.2d 901 (3rd Cir. 1953); *Lairsey v. Advance Abrasives Co.*, 542 F.2d 928 (5th Cir. 1976); *First Nat'l Bank of Salem v. Hirsch*, 535 F.2d 343 (6th Cir. 1976); *Smith v. Lujan*, 588 F.2d 1304 (9th Cir. 1979); *Salsbury v. United States*, 356 F.2d 822 (D.C.Cir. 1966). *See* Wright & Miller, *Federal Practice and Procedure* § 2873 at 263-66 (1973).

construed by the 11th Circuit in its Order of August 5, 1998 – when the initial appeal was dismissed), the District Court had no jurisdiction to enter the Rule 54(b) certification order on March 5, 1998. That certification is therefore void. *Accord, Boyko*, 185 F.3d at 674, 675 (Posner, J., finding a district court's grant of a Rule 60(b) motion while the case was on appeal to be void); *see also Kusay*, 62 F.3d at 193 (concluding that district court findings while case was on appeal were a "nullity").

This appeal should not have been deemed tardy. No valid 54(b) certification has ever been entered by the District Court in this case.[6] The case came to conclusion when, on April 2, 1999, the district court allowed the defendants to voluntarily dismiss the remaining counterclaims over Plaintiff's objection. At that point, Capt. Corwin again filed a timely Notice of Appeal asking for review of the proceedings below. Again, the 11th Circuit requested clarification on whether the issues were appealable because of the voluntary dismissal, essentially asking whether the case fell into the *Jetco* exception.[7]

---

[6] Plaintiff, without objection from the Defendants, mistakenly asked the district court to enter a Fed.R.Civ.P. 54(b) order while the case was before the 11th Circuit. The district judge mistakenly entered the order apparently not realizing that he did not possess jurisdiction because the case was on appeal. The parties and the judge were blinded by the desire to expedite the appeal without first litigating ALPA's minor counterclaim. Plaintiff by its request cannot confer jurisdiction upon the district court which it otherwise does not possess.

[7] *Jetco* allows an exception to the finality rule when a series of court orders, considered together, terminated the litigation as effectively as a formal order. *Jetco Elec. Indus., Inc. v. Gardiner*, 473 F.2d 1228 (5th Cir. 1973).

Plaintiff responded to this request noting that the case clearly fell into that exception (a conclusion apparently shared by the 11th Circuit since it has allowed an appeal from the April 2, 1999 decision). Defendant contended, however, that Plaintiff should have appealed within 30 days from the entry of judgment under Rule 54(b) in March of 1998. As noted above, the case was on appeal when the 54(b) certification was entered; the District Court's March 6, 1998 certification, which as noted should not have been issued, is therefore without effect. The plaintiff's choice after the 11th Circuit declined to accept jurisdiction over the first appeal under the provision of Fed. R. App. P. 4(a)(2) was to request a second 54(b) certification and appeal; or to await final resolution of the case in the district court. The plaintiff took the second course and appealed after the April 2, 1999 order was entered.[8]

---

[8] Capt. Corwin sued ALPA to enforce his SBA award which made him whole for pay, benefits and employment status. EAL fully implemented the award by changing its personnel records to show Capt. Corwin employed continuously with EAL from 1966 to January 18, 1991, when EAL shut down and laid off its employees. Both parties to the Corwin SBA award, EAL and ALPA, are bound to its terms. *International Ass'n of Machinists v. Central Airlines*, 772 U.S. 682, 688 (1963), *rehearing denied*, 373 U.S. 947 (1963). The Corwin SBA award binds EAL and ALPA to the facts of the award as well as its holding. *See, Diamond v. Terminal Ry.*, 421 F.2d 228, 233 (5th Cir. 1970) (The scope of System Board awards " . . . is among the narrowest known to the law."). The trial court's failure to enforce the Corwin SBA award by binding ALPA to the holding and facts of the award remains inexplicable. This case is analogous to a recent decision in which ALPA violated rights of individual beneficiaries by taking money from a settlement corpus created through a court decree.

The 11th Circuit's determination of October 21, 1999, is exceptionally harsh. It denies to Capt. Corwin an initial appeal from the summary judgment dismissal of the District Court. The Defendant and the District Court in this case clearly understood Capt. Corwin's expressed intent to appeal the merits of the summary judgment dismissal. The initial Notice of Appeal of January 9, 1998, was filed by Capt. Corwin following statements by the Defendant and the trial judge that neither desired to invest the resources necessary to litigate the counterclaim, the total value of which is less than $18,000.[9] Following the 11th Circuit's Order of August 5, 1998, Capt. Corwin was consistent in his refusal to agree to a voluntary dismissal of the counterclaim, insisting strenuously that the counterclaim should be either litigated or dismissed with prejudice so that his appeal on the merits could proceed. It is respectfully submitted that Capt. Corwin thereby preserved the right to appeal the merits of the summary judgment dismissal as he filed a second Notice of Appeal within 30 days of the District Court's final order of April 2, 1999.

A constructive trust was imposed by the court which required ALPA to follow fiduciary principles in administering the trust. *See, Beckett v. Air Line Pilots Ass'n*, 995 F.2d 280, 287 (D.C.Cir. 1993).

[9] Defendants filed motions to the trial court seeking voluntary dismissal of their counterclaim following the 11th Circuit's August 5, 1998 Order dismissing the appeal. These filings are consistent with Defendants' position throughout this litigation that their counterclaim not be litigated except as an adjunct to a trial on the merits of Plaintiff's claim.

A party should not lose its right to an initial appeal due to the 11th Circuit's insistence upon retaining the minority view. Capt. Corwin filed a timely initial notice of appeal which expressed clearly his intent to appeal from an adverse ruling by the trial court. He should not lose his right to access to the appellate level due to the 11th Circuit's misapplication of jurisdictional principles. Had Capt. Corwin resided in most any of the 47 other states of the union not served by the 11th Circuit, his appeal would have been heard. The Supreme Court should adopt the majority position of the federal courts of appeals as a national policy of jurisdiction which would avoid the quagmire presented by cases of this genre. The enforcement of the merits of the Corwin SBA award which raises fundamental issues under the Railway Labor Act must not be defeated by technical rules of jurisdiction which have been rejected by most Federal Court of Appeals. This case should be heard.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

NICHOLAS E. KARATINOS, ESQ.
Counsel for Petitioner,
Capt. Richard Corwin

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-10543-JJ

RICHARD CORWIN, Captain,

Plaintiff-Counter-Defendant-Appellant,

versus

AIR LINE PILOTS ASSOCIATION,

Defendant-Counter-claimant-Appellee,

ROBERT O. HARRIS,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

Before: COX, HULL and MARCUS, Circuit Judges.

BY THE COURT:

Appellant's motion for reconsideration of the Court's October 21, 1999, order dismissing this appeal for lack of jurisdiction is DENIED. Corwin's notice of appeal, filed April 12, 1999, was untimely from the district court's March 5, 1998, Fed.R.Civ.P.54(b) certification. *See* Fed.R.App.P. 4(a)(1)(A); *Usden v. Acker*, 947 F.2d 1563, 1570 (11th Cir. 1991), *cert. denied*, 508 U.S. 959 (1993);

McLaughlin v. City of LaGrange, 662 F.2d 1385, 1387 (11th Cir. 1981), *cert. denied*, 456 U.S. 979 (1982).

Issued February 9, 2000.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-10543-JJ

RICHARD CORWIN, Captain,

Plaintiff-Counter-Defendant-Appellant,

versus

AIR LINE PILOTS ASSOCIATION,

Defendant-Counter-Claimant-Appellee,

ROBERT O. HARRIS,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

Before: COX, HULL and MARCUS, Circuit Judges.

BY THE COURT:

Appellee Air Line Pilots association's motion for remand is carried with the case.

Issued February 9, 2000.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-10543-JJ

RICHARD CORWIN, Captain,

Plaintiff-Counter-Defendant-Appellant,

versus

AIR LINE PILOTS ASSOCIATION,

Defendant-Counter-claimant-Appellee,

ROBERT O. HARRIS,

Defendant, Appellee.

Appeal from the United States District Court
for the Middle District of Florida

Before: COX, HULL and MARCUS, Circuit Judges.

BY THE COURT:

After reviewing the materials submitted in response to this Court's jurisdictional question, regarding the finality of the district court's April 2, 1999, order granting Appellee Air Line Pilots Association's motion to voluntarily dismiss its counterclaim, we conclude that the appeal MAY PROCEED. The scope of the appeal is limited to review of the April 2, 1999, order. The district court's March 5, 1998, Rule 54(b) certification rendered

the summary judgment order "final and appealable." *See McLaughlin v. City of LaGrange*, 662 F.2d 1385, 1387 (11th Cir. 1981), *cert. denied*, 456 U.S. 979 (1982). Thus, Corwin's notice of appeal should have been filed within 30 days of the March 6, 1998, entry of the final judgment, or by Monday, April 6, 1998. *See* Fed.R.App.P. 4(a)(1)(A), 26(a)(3); *Useden v. Acker*, 947 F.2d 1563, 1570 (11th Cir. 1991), *cert. denied*, 508 U.S. 959 (1993). Corwin's notice of appeal, filed April 12, 1999, was more than one year late.

Issued October 21, 1999

APPENDIX D

Memorandum Order of the Eleventh Circuit Court of Appeals issued by the Clerk of the court to the parties on May 18, 1999, requiring the parties' statement of position regarding the following jurisdictional questions(s):

> Whether the district court's April 2, 1999, order is a final decision, and therefore, appealable? *See, State Treasurer of the State of Michigan v. Barr.*, 168 F.3d 8 (11th Cir. 1999); *Construction Aggregates, Ltd. v. Forest Commodities Corp.*, 147 F.3d 1334 (11th Cir. 1998); *Mesa v. U.S.*, 61 F.3d 30 (11th Cir. 1995).

APPENDIX E

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CAPTAIN RICHARD CORWIN,

Plaintiff,

v.

CASE NO. 96-1260-CIV-T-26C

AIR LINE PILOTS ASSOCIATION and ROBERT O. HARRIS,

Defendants.
_____/

ORDER

Before the Court is Plaintiff's Request for Reconsideration of the Order of Dismissal, and Reconsideration of Plaintiff's Motion of September 18, 1998, Requesting Reopening of discovery and a Hearing (Dkt. 83).

On December 22, 1997, this Court granted Defendants' motion for summary judgment as it related to Plaintiff's amended complaint, but denied the motion as it related to the counterclaim of Air Line Pilots Association (ALPA) (Dkt. 61). On December 23, 1997, the Clerk entered judgment for Defendants on Plaintiff's amended complaint (Dkt. 62). On January 8, 1998, Plaintiff filed a notice of appeal directed to the order granting summary judgment for Defendants (Dkt. 67). On January 26, 1998, this Court administratively closed the case pending resolution of Plaintiff's appeal (Dkt. 70). On February 27,

1998, Plaintiff filed a motion seeking certification for immediate review pursuant to Federal Rule of Civil Procedure 54(b) (Dkt. 71). On March 5, 1998, the Court granted Plaintiff's Rule 54(b) motion, determining that there was no just reason for delay and directing the Clerk to enter final judgment on behalf of Defendants (Dkt. 72). On March 11, 1998, the Clerk entered an amended judgment (Dkt. 73). On August 5, 1998, the Eleventh Circuit dismissed the appeal for lack of jurisdiction. Specifically, the Court of Appeals stated that the December 23, 1997, judgment was not "final and appealable" and that appellant's notice of appeal, filed before this Court entered the Rule 54(b) certification, was "premature and ineffective." On September 17, 1998, ALPA filed a motion for dismissal of its counterclaim without prejudice (Dkt. 79). On December 2, 1998, this Court dismissed the counterclaim without prejudice.

Plaintiff argues in his Request for Reconsideration that "acceptance of a withdrawal of the counterclaim is inconsistent with the Order of the 11th Circuit of August 5, 1998, which requires a 'final' adjudication of all matters before the trial court." Plaintiff maintains that this Court is limited to two courses of action regarding the counterclaim: 1) trial of the counterclaim; or 2) dismissal of the counterclaim with prejudice. The Court concludes that the Eleventh Circuit's Order does not limit this Court to the two options advanced by Plaintiff. The Court of Appeals dismissed the appeal because the December 23, 1997, judgment was not final and appealable. The judgment was not final and appealable because it did not "dispose of all the claims of all of the parties to the

action[.]" Indeed, the December 22, 1997, Order specifically denied summary judgment as to Defendants' counterclaim. Therefore, ALPA's counterclaim remained viable at the time of the December 23, 1997, Order.

Plaintiff will not suffer "clear legal prejudice" if the Court permits Defendant to dismiss its counterclaim without prejudice in accordance with Federal Rule of Civil Procedure 41(a)(2). *See McCants v. Ford Motor Company, Inc.*, 781 F.2d 855 (11th Cir. 1986). Plaintiff would be foreclosed from appealing this case if the parties stipulated to a voluntary dismissal of the counterclaim without prejudice. *See State Treasurer of the State of Michigan v. Barry*, 168 F.3d 8 (11th Cir. 1999). However, Plaintiff has opposed ALPA's motion for voluntary dismissal in its motion to reopen discovery (Dkt. 81) and in the instant motion for reconsideration. Therefore, the Order granting the counterclaimant's motion for voluntary dismissal is appealable by the counter-defendant. *See Kirkland v. National Mortgage Network, Inc.*, 884 F.2d 1367 (11th Cir. 1989) (holding that district court's order granting plaintiff's motion for voluntary dismissal without prejudice under Rule 41(a)(2) was final and appealable by defendant, where district court denied defendant's motion for reconsideration of dismissal without prejudice and motion for dismissal with prejudice); *see also Barry*, 168 F.3d at 14 ("[A]s applied by Kirkland, a defendant who opposes the dismissal [under rule 41(a)(2)] has suffered an adverse final judgment and may appeal."). Plaintiff as counter-defendant has suffered an adverse final judgment. As such, the Eleventh Circuit may review the preceding nonfinal order granting summary judgment. *See Kirkland*, 884 F.2d at 1369-1370. Furthermore, to the extent

that Plaintiff has suffered any prejudice, such prejudice is attributable to Plaintiff's failure to file an amended notice of appeal subsequent to this Court's Rule 54(b) certification.

Accordingly, it is ordered that Plaintiff's Request for Reconsideration of the Order of Dismissal, and Reconsideration of Plaintiff's Motion of September 18, 1998, Requesting Reopening of Discovery and a Hearing Dkt. 83) is denied. Plaintiff has not argued that the Court should impose conditions on the voluntary dismissal. Therefore, the Court does not consider the imposition of conditions.

DONE AND ORDERED at Tampa, Florida, on April 2, 1999.

RICHARD A. LAZZARA
UNITED STATES DISTRICT
JUDGE

COPIES FURNISHED TO:
Counsel of Record

APPENDIX F

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-2050

RICHARD CORWIN, Captain,

Plaintiff-Counter-Defendant-Appellant,

versus

AIR LINE PILOTS ASSOCIATION,

Defendant-Counter-Claimant-Appellee,

ROBERT O. HARRIS,

Defendant-Appellee,

Appeal from the United States District Court
for the Middle District of Florida

Before: HATCHETT, Chief Judge, DUBINA and HULL, Circuit Judges.

BY THE COURT:

This appeal is DISMISSED for lack of jurisdiction. The December 23, 1997, judgment was not final and appealable because it did not dispose of all the claims of all of the parties to the action and initially was not certified for immediate review under Rule 54(b). *See* 28 U.S.C. § 1291; Fed.R.Civ.P. 54(b); *McLaughlin v. City of LaGrange*, 662 F.2d 1385, 1387 (11th Cir. 1981), *cert. denied*,

456 U.S. 979 (1982). Appellant's notice of appeal, filed before the district court entered the Rule 54(b) certification, was premature and ineffective. *See McLaughlin*, 662 F.2d at 1387.

Issued August 5, 1998.

APPENDIX G

Memorandum Order of February 25, 1998, issued by the Clerk of the Eleventh Circuit Court of Appeals requesting that the parties address the following jurisdictional question:

> Whether the December 23, 1997, judgment disposed of defendant Air Line Pilots Association's counterclaim, and thus, is final and appealable? 28 U.S.C. § 1291; Fed.R.Civ.P. 54(b); *Williams v. Bishop*, 732 F.2d 885 (11th Cir. 1984); *In re Yarn Processing Patent Litigation*, 680 F.2d 1338 (11th Cir. 1982).

APPENDIX H

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CAPTAIN RICHARD CORWIN,

Plaintiff,

v.

AIRLINE PILOTS ASSOCIATION and ROBERT O. HARRIS,

Defendants.

CASE NO. 96-1260-CIV-T-26C

ORDER

Before the Court is Plaintiff's Motion Pursuant to Rule 54(b) F.R.C.P. requesting that the Court issue an Express Direction for Entry of Final Judgment (Dkt. 71). After carefully considering the motion, which recites that the Defendants have no objection to it, the Court is of the opinion that the motion should be granted. To rule otherwise is to risk the dismissal of the Plaintiff's appeal, *see Penton v. Pompano Constr. Co.*, 963 F.2d 321 (11th Cir. 1992), and to delay the ultimate resolution of this case. ACCORDINGLY, it is ORDERED AND ADJUDGED as follows:

1) The Plaintiff's Motion Pursuant to Rule 54(b) F.R.C.P. Requesting that the Court Issue an Express Direction for Entry of Final Judgement (Dkt. 71) is granted.

2) In accord with Federal Rule of Civil Procedure 54(b), the Court expressly determines that there is no just

cause for delay in the entry of final judgment on behalf of the Defendants, notwithstanding the pendency of the Defendant Airline Pilots Association's pending counterclaim, in that the core issues in this case, including those involved in the counterclaim, were decided by the Court in granting summary judgment for the Defendants and in dismissing the Plaintiff's counterclaim.

3) The Clerk is directed to enter an amended judgment in favor of the Defendants as to the Plaintiff's complaint.

4) The Clerk is further directed to keep this file administratively closed pending the outcome of the Plaintiff's appeal.

DONE AND ORDERED at Tampa, Florida, on March 5, 1998.

RICHARD A. LAZZARA
UNITED STATES DISTRICT
JUDGE

COPIES FURNISHED TO:
Counsel of Record

APPENDIX I

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CAPTAIN RICHARD CORWIN,

Plaintiff,

CASE NO. 96-1260-CIV-T-26C

v.

AIR LINE PILOTS ASSOCIATION and ROBERT O. HARRIS,

Defendants.

ORDER

The Court notes that the Plaintiff has appealed from this Court's entry of final summary judgment in favor of the Defendants. The Court further notes that the Defendant ALPA's counterclaim against the Plaintiff remains pending for disposition. The Court is of the opinion that it is not in the interest of judicial economy for it to try the Defendant ALPA's counterclaim until such time as the Plaintiff's appeal is resolved, especially since Plaintiff's counterclaim and the Defendant ALPA's counterclaim are inextricably intertwined. Accordingly, the clerk is directed to administratively close this file until the Plaintiff's appeal is resolved.

DONE AND ORDERED *at Tampa, Florida, this 26th* day of January, 1998.

RICHARD A. LAZZARA
UNITED STATES DISTRICT
JUDGE

COPIES FURNISHED TO:
Counsel of Record

APPENDIX J

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RICHARD CORWIN,

Plaintiff,

v.

CASE NO.
96-1260-CIV-T-26C

AIR LINE PILOTS
ASSOCIATION and
ROBERT HARRIS,

Defendant.

ORDER

This cause came on for a hearing before the Court on Monday, December 22, 1997, on the Defendants' Motion for Summary Judgment (Dkt. 27) and the Plaintiff's Motion for Partial Summary Judgment. At the conclusion of the hearing, the Court orally granted the Defendant's motion as it related to the Plaintiff's complaint, denied the motion as it related to the Defendant ALPA's counterclaim, and denied the Plaintiff's motion. In doing so, the Court announced on the record findings of fact and conclusions of law supporting the determinations as to the respective motions. It is, therefore, ordered and adjudged as follows:

1) The Defendants' Motion for Summary Judgment (Dkt. 27) directed to the Plaintiff's Amended Complaint is granted and the clerk is directed to enter a judgment for the Defendants.

2) Defendant ALPA's Motion for Summary Judgment (Dkt. 27) directed to its counterclaim is denied.

3) The Plaintiff's Motion for Partial Summary Judgment (Dkt. 26) is denied.

4) The findings of fact and conclusions of law announced on the record in support of the Court's granting of the Defendants' Motion for Summary Judgment are incorporated in this order and made a part hereof for all purposes.

DONE AND ORDERED at Tampa, Florida, this 22nd day of December, 1997.

RICHARD A. LAZZARA
UNITED STATES DISTRICT
JUDGE

COPIES FURNISHED TO:
Counsel of Record
Law Clerk
Rita Cole, Courtroom Deputy